

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK HELICOPTER CHARTER INC., and
MICHAEL ROTH, individually,

07 Civ. 4069(MGC)

Plaintiffs,

-against-

HUDSON RIVER PARK TRUST

**DECLARATION OF MICHAEL
ROTH IN SUPPORT OF A
PETITION FOR AN ORDER TO
SHOW CAUSE**

Defendants.

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Michael Roth declares under penalty of perjury that the following is true and correct:

1. I am the president of New York Helicopter Charter, Inc. ("NYH"), the plaintiff in the above-entitled action.
2. This affidavit is submitted in support of the attached Order to Show Cause as to why the defendant Hudson River Park Trust ("HRPT") should not be enjoined from preventing NYH the opportunity to operate at the West 30th Street Heliport, a public use heliport, under the same terms and conditions as other helicopter operators who have use of the public heliport on July 4, 5 and 6, 2008. I will provide Air Pegasus and HRPT with our company credit card so that both APH and HRPT will financially benefit.
3. This affidavit supplements my previous affidavits filed with this Court on May 21, 2007 and October 11, 2007, which I incorporate herein, which includes my background, the background of NYH, my history with the HRPT, and the factual reasons in support of the Amended Complaint filed herein on April 25, 2008.
4. Currently, NYH is operating at the Downtown Manhattan Heliport ("DMH") in order to

mitigate the damages it has incurred due to its improper and unlawful ouster from the West 30th Street heliport, a public use heliport, on May 6, 2007, by the HRPT.

5. The West 30th Street heliport is the only heliport in New York City authorized to operate twenty-four (24) hours a day, seven (7) days a week.
6. NYH operated at the West 30th Street heliport as well as the DMH since March, 2004, and currently operates between fifty (50) and sixty (60) flights a day.
7. NYH employs thirty (30) full time employees.
8. NYH has never been in violation of any laws, rules or regulations and has maintained an impeccable service record.
9. The HRPT, a state actor, is responsible for overseeing the West 30th Street operations and policies.
10. As indicated on the New York State Department of Transportation website, the West 30th Street heliport is a public use heliport. (<https://www.nysdot.gov/portal/page/portal/divisions/operating/opdm/aviation/directories/listings/heliports>)
11. Injunctive relief by Order to Show Cause was previously requested on October 11, 2008, before this Court, which was not granted.
12. On May 6, 2007, NYH was prohibited from operating out of the West 30th Street heliport.
13. Since NYH's ouster from the West 30th Street heliport on May 6, 2007, NYH has been granted permission by the New York – New Jersey Port Authority ("Port Authority") - the DMH's Fixed Base Operator - to operate from the DMH on weekdays and certain weekends.
14. The Port Authority allows helicopter operators at the DMH to operate from Monday through Friday, from 7 a.m to 7 p.m., thus reducing NYH's hours of operation by 70%.

15. It is within the Port Authority's sole discretion whether it will allow flights to take off and land on the weekends from the DMH.
16. Although the Port Authority generally allows weekend operations to occur at the DMH, it may close the DMH on weekends and holidays with very little advanced warning.
17. On Thursday, June 26, 2008, NYH was informed that the Port Authority had decided to shut down the DMH on July 4, 5 and 6, 2008 due to the July 4th holiday weekend.
18. Notice of this operational shutdown was given to NYH by Enrique Wegel; manager of the DMH for the Port Authority. (Exhibit A)
19. The impact of this closing will cause irreparable harm to NYH (for the reasons which I have detailed below) as it has been banned from using the West 30th Street heliport, the only twenty-four (24) hour a day, seven (7) day a week heliport located in New York City; thus forcing NYH to completely shut down its operations from the DMH on one of the year's busiest weekends.
20. Importantly, no other helicopter tour provider or charter operator within or outside of New York City faces similarly burdensome restrictions, as they and private helicopter operators are allowed to operate out of the West 30th Street heliport which is a public heliport.
21. In addition to the \$100,000 that NYH will lose as a result of the closing of the DMH during the busy July 4th holiday weekend, NYH's customers will be forced to patronize other helicopter companies in New York City which are allowed to operate out of the West 30th Street heliport.
22. Traditionally, the July 4th holiday weekend is one of the year's busiest for helicopter operators in New York City.
23. The closing of the DMH and the denial of access to the West 30th Street heliport will

negatively impact NYHs customer base, as people seeking helicopter charters will believe, with good reason, that NYH will not be operating during busy holidays and weekends, thus irreparably harming NYH's reputation and business.

24. On June 27, 2008, in an effort to avoid the need for further Court intervention, I sent a letter to Connie Fishman, President of the Hudson River Park Trust, in which I respectfully requested that the HRPT abide by its civic obligations and administer the West 30th Street heliport as a public use heliport, as its designation mandates. (Exhibit C). I also sent letters to various other officials as it is not my intention to burden this court.

25. On July 1, 2008, I received a letter from Laura Silberfield of the HRPT (Exhibit H), on Connie Fishman's behalf, which stated that, "arrangements for permission to use the West 30th Street heliport are to be made through the operator of the heliport, Air Pegasus Heliport (APH), not the Trust."

26. Ms. Silberfield attached a letter from APH (Exhibit I) which denies NYH's request to operate out of the West 30th Street heliport during the July 4, 2008 weekend.

27. Notwithstanding my good faith attempts to resolve this situation, I have received only two (2) other responses from government and state agency officials; one from Connie Fishman dated April 21, 2008 (Exhibit J); and one from Richard Jurewicz (Exhibit K), Associate Director of Correspondence for New York State Attorney General Andrew M. Cuomo.

28. Ms. Fishman's letter states in part, "arrangements for permission to use the West 30th Street heliport are made through the operator of the heliport, Air Pegasus Heliport, not the Trust."

29. Mr. Jurewicz's letter states in part, "We will certainly keep your comments in mind during any future discussions our office has regarding this issue."

30. These letters underscore the tremendous difficulty I have faced in seeking redress for the

unfair and discriminatory treatment by the HRPT at the West 30th Street heliport.

31. In the competitive environment of the helicopter charter business, our forced absence from the West 30th Street Heliport has resulted in injury to our business reputation and profile which cannot be calculated in money damages alone.
32. In addition, the good will accumulated over the years by NYH will be diminished, as numerous commitments and reservations have already been made by prominent tour guides and travel agents for the July 4, 2008 weekend, thus causing them to patronize other helicopter charter companies.
33. Clearly there is no harm to HRPT who actually will make money if the relief I am requesting is granted.
34. The above facts are true to the best of my knowledge, information and belief and I am aware that I am subject to a penalty for perjury if willfully false.

Michael Roth

Dated: July 2, 2008
New York, New York